

CASE STUDY "JUŽNI JADRAN" HERCEG NOVI

I: INTRODUCTION: The case of "Južni Jadran" refers to the privatization of a tourist and catering company in Herceg Novi, which owned valuable real estate of more than 100 thousand square meters on the most beautiful part of the Montenegrin coast, with a considerable number of buildings. The case study shows that Podgorica-based company "Carine", which appeared as a buyer of a first package of shares, for which it paid a negligible price instead of real privatization, and pushed the company "South Adriatic" into debt and liquidation, thereby taking its valuable real estate. It also shows one of the behavior patterns of privatization tycoons, who have emerged as buyers of once rich companies because of their property and abuse of official business in the economy, at the expense of the public interest and especially the interest of minority shareholders.

II: "CARINE" ENTERS "JUŽNI JADRAN": In January 2001, Podgorica-based company "Carine", owned by Cedomir Popovic, bought 30 percent of shares in the tourist and catering company "Južni Jadran", which owned a large number of real estate in Herceg Novi, at a public auction. "Carine" bought shares of the then Pension Fund and Employment Office for the amount of DM 247,632. Popovic paid two deutsche marks per share at the special auction, although the nominal value of a share was DM 40. Namely, there were no interested parties at a public auction held in December 2000, so the Privatization Council held a special

auction January next year, where the value of a share fell from 40 to two deutsche marks and where Popovic himself appeared as a buyer.¹

However, the entry of Cedomir Popovic in Herceg Novi-based company did not bring in positive business results. The company's financial report for 2005 has shown that based on the decision of shareholders' meeting held on 31 March 2004 the capital, the value of which was determined at €7,234,040, was reduced, based on a loss presented by 2003 annual accounts, which stood at €1,015,757. The document states

that on the fourth special shareholders' meeting held on 12 December 2005, a decision on reduction of the capital was adopted for the amount of the loss presented in business records according to the annual accounts for 2004 in the amount of €1,508,822.²

III: FIRST ATTEMPT OF REGISTRING REAL ESTATE: In December 2006 Ranko Vujovic, the CEO of "Južni Jadran", submitted a request to the Real Estate Administration asking to grant the right of ownership of the

¹ Purchase and sale Agreement (shares), at the public auction held in Podgorica, on 24 January 2001

² Audit report of "Južni Jadran" for 2005, on 24 February 2005

real estate in Baosici, which covers 22,344 square meters and has 11 buildings of around 4,744 square meters, to this company.³

In the abovementioned request, Vujovic referred to the Law on State Surveying and Cadaster of

Članom 83 istog Pravilnika je određeno da se „na nepokretnostima u državnoj svojini upisuje pored imaoaca prava državne svojine i korisnik nepokretnosti“ (st.1),- što znači da uvijek za svaku nepokretnost mora biti unesen podatak čija je svojina ta nepokretnost, a evidentno je da u svojinskom režimu našeg pravnog sistema postoje samo dva oblika svojine „državna svojina“ i „privatna svojina“.

Upis svojine prvo zatražio „Juzni Jadran“ first to request registering real estate

Immovable property and the Rulebook on Development and Maintenance of cadaster of immovable property, stating that there are only two forms of property in the Montenegrin legal system – state-owned and private.

Consequently, according to Vujovic's interpretation „Juzni Jadran“ should have been granted the right of

ownership instead of the right of use.

However, in February 2007, the Real Estate Administration in Herceg Novi refused the request on the grounds that "Juzni Jadran" had not provided any legally valid evidence on which it could be determined that it acquired the property right over the real estate through a legal transaction. At the same time, the management, according to the Law on the property, registered the real estate as state-owned, while the

Ocjenom svih dokaza, utvrđeno je da su djelimično ispunjeni uslovi iz člana 88. a u vezi sa članom 72. Zakona o državnom premjeru, katastru i upisima prava na nepokretnostima za ispravku upisa u listu »B« lista nepokretnosti 387 K.O. Bošići, na način što se JUŽNI JADRAN“ AD Herceg Novi iz Bijele briše kao nosioc prava korišćenja na nepokretnostima označenim kao katastarska parcela

Uprava za nekretnine odbija zahtjev „Južnog Jadrana“

Uprava za nekretnine odbija zahtjev „Južnog Jadrana“

"Juzni Jadran" was registered as the holder of rights of use.⁴

IV: CONTROVERSIAL DEBT AGREEMENT: Only a few months later, i.e. in June 2007, the company "Carine" doo submitted a request to the Real Estate Administration for registration of real estate of 99,813 square meters, which belonged to "Juzni Jadran". The locations in question are situated in Sutorina, Meljine, Kumbor, Djenovici and Baosici, together with all buildings located on the land.⁵

Through the request, director and owner Cedomir Popovic, referred to the Debt Settlement Agreement by transferring the right of ownership of real estate, which was concluded between "Juzni Jadran" and "Carine" just a day before the request was submitted.⁶ Under the agreement, which was signed by Cedomir Popovic and Ranko Vujovic, the company "Juzni Jadran" owed €4,844,056 to „Carine“ at the end of 2006. The reason for debt is not known, but the agreement states that the assessors Vukasin Djurickovic and Andrija Pavlicevic found that the overall market value of close to 100,000 square meters of real estate, and

Ugovorne strane saglasno opredjeljuju da nepokretnosti (zemljište i objekti) označene u članu 1 tačka c) ovog Ugovora, prema procjeni izvršenoj dana 07.05.2007.godine od strane stručnjaka (sudskog vještaka dipl.ing. Vukašina Đuričkovića iz Podgorice ujedno i vodećeg procjenjivača i dipl.ing. Andrije Pavlicevića iz Podgorice takođe vodećeg procjenjivača) da sveukupna tržišna vrijednost tih nepokretnosti iznosi 3.488.877,00€ (tri miliona četristo osamdeset osam hiljada osamstosedamdeset

³ Request of „Juzni Jadran“ AD Herceg Novi submitted to the Real Estate Administration, on 5 December 2006

⁴ Decision of Real Estate Administration, branch office from Herceg Novi, on 12 February 2007

⁵ Request for registration of property into the name of a new holder "Carine" d.o.o. Podgorica, on 15 June 2007

⁶ Debt Settlement Agreement, transfer of the debt of ownership of real estate, concluded on 14.11.2007

Stvarna vrijednost imovine „Južnog Jadrana“ višestruko potcijenjena

the attached buildings, was €3,488,877.

U smislu određenja Zakona o privrednim društvima, prenosilac, kao akcionarsko društvo, odgovara za sve svoje obaveze cjelokupnom svojom imovinom i njegov kapital je na dan zaključenja ovog Ugovora, podijeljen na 1.161.565 akcija izdatih i upisanih kod „Centralne depozitarne agencije” AD u Podgorici, od kojih sticalac ima u vlasništvu 1.098.832 akcije (od toga upisanih kod „Centralne Depozitarne Agencije” AD Podgorica na njegovo ime 596.398 akcija, i još 502.434 akcije koje mu je u svojini prenio Čedomir Popović, po osnovu Ugovora o prenosu svojine nad akcijama, ovjerenog kod Osnovnog suda u Podgorici pod Ov.br. 15215/2007 od 04.05.2007.god.) tj. stvarno vlasništvo nad 94,59 % od ukupnog broja upisanih akcija odnosno akcionarskog kapitala prenosioca, s tim što su prava i odgovornost svakog akcionara pojedinačno ograničeni do visine njegovog uloga odnosno srazmjerni broju akcija koje posjeduje.

By the end of 2006 “Carine” had acquired a majority ownership in „Juzni Jadran”

At the time of the conclusion of the debt agreement, as arising from one of the contractual provisions, “Carine” held 94.59 percent of the share capital in “Juzni Jadran”, which rises a suspicion that a fictitious debt could have been at issue so as the owner of Podgorica-based company could get valuable real estate in Herceg Novi. It is also interesting that the contracting parties agreed that the cost of sales tax, and other expenses would be borne by a transferor, i.e. “Juzni Jadran”

In July 2007, the Real Estate Administration from Herceg Novi, adopted a partial decision, which registered “Carine”, based on the Agreement on Debt Settlement, as holders of the right of use of real estate along with “Juzni Jadran”, save from three cadastral parcels in Baosici.⁷ Not satisfied with the epilogue, Podgorica-based company, submitted a new request to the Real Estate Administration from Herceg Novi in August, asking again for registration of rights of ownership.⁸ The same month, Herceg Novi branch office brought an additional decision which registered “Carine” as a holder of right of use of the three parcels in Baosici.⁹

V: OFFICIAL BODIES ESTABLISH A SIGNIFICANTLY HIGHER VALUE OF REAL ESTATE: In early 2009, the minority shareholders of “Juzni Jadran” addressed Herceg Novi Tax Administration, after finding out about the Debt Settlement Agreement by transferring the right of ownership of real estate. They requested from the Tax Administration to determine whether the real estate transfer taxes were paid. Acting on the request, the Tax Administration determined that the tax liability was not reported, which was the reason it

hired experts to determine the value of the real estate.¹⁰

Na osnovu svega gore izloženog smatram da cjelokupna prometna vrijednost građevinskih objekata na dan 14.06.2007. godine, po ovom Ugovoru iznosi ukupno 11.761.900,00 €

Ukupna procijenjena tržišna vrijednost po Ugovoru o izmirenju duga prenosom prava svojine na nepokretnostima sačinjenog između “Južnog Jadrana” AD iz Herceg Novog i “Carine” Doo iz Podgorice, na dan 14.06.2007. godine utvrđena je na iznos od (10.812.325,00 € + 11.761.900,00 €) 22.574.225,00 €.

Tax Administration determined location value tax at 22.5 million

In the report, experts Vladimir Gardasevic and Djordje Nikezic estimated that the market value of the real property under the Agreement on Debt Settlement on 14 June 2007 (the date of concluding the agreement) amounted to €22,574,225. Consequently, the tax liability was determined to be €451,484.

⁷ Partial decision of the Real Estate Administration from Herceg Novi, on 20 July 2007

⁸ Solicitation of “Carine” to the Branch office of the Real Estate Administration of the Municipality of Herceg Novi, dated 2 February 2007

⁹ Additional decision of the Real Estate Administration, on 10 August 2007

¹⁰ Tax Administration Decision, on 23 April 2009

VI: PURCHASE OF HOTEL DELFIN: In September 2008, Cedomir Popovic and Ranko Vujovic concluded another purchase and sale agreement of nearly 8,000 square meters of land in Bijela, including the facilities at the location in question.¹¹ A popular hotel "Delfin", which Popovic bought in the public bid. It is interesting that the tender was advertised in the former daily "Republika", which had an insignificant number of readers.

According to the agreement, "Carine" bought the real estate for €7.45 million. The provisions specified that at the time the debt "Juzni Jadran" owed to Podgorica-based firm stood at €2,985,556, which is why the parties agreed a settlement of the debt. "Carine" were obligated to pay the rest of €4,464,443 "Juzni Jadran" within seven days. In other words, Popovic was trading with himself. Only a few days after the conclusion of the purchase and sale agreement, i.e. on 6 November 2008, the procedure of voluntary liquidation of "Juzni Jadran" AD was launched.

PRODAVAC i KUPAC utvrđuju cijenu imovine navedenu u članu 2 ovog Ugovora u ukupnom iznosu od 7.450.000,00 (sedam miliona četiri stotine pedeset hiljada eura) koju je KUPAC ponudio na javnom nadmetanju, a PRODAVAC prihvatio, kao najpovoljniju, odlukom Odbora direktora od 29.09.2008.godine .

Ugovorne strane saglasno utvrđuju da KUPAC prema PRODAVCU ima dospjela potraživanja sa kamatom , kako je utvrđeno u međusobnom savjetovanju na dan 29.09.2008.godine u ukupnom iznosu od 2.985.556,16 eura , skladno kojim činjenicama saglasno prihvataju i utvrđuju da je KUPAC , u visini tih potraživanja , izmirio PRODAVCU dio od ukupnog iznosa utvrđene kupoprodajne cijene , a KUPAC namirio dugovanja u istom iznosu , tj. iznos od 2.985.556,16 eura , što će se , kao gašenje međusobnih obaveza evidentirati u poslovnim knjigama ugovornih strana .

Company „Carine“ obtained hotel “Delfin“ through debt agreement

VII: ILLEGAL GAMES WITH REGISTERING PROPERTY: Concerning the real estate that once belonged to "Juzni Jadran", "Carine" retained the right of its use until 2010. In February the same year, the company submitted a request to Herceg Novi Real Estate Administration for granting the right of ownership of the real estate under the law.¹² This time, the Podgorica-based company relied on the new Law on Ownership Rights and the Law on State Property, based on which the Real Estate Administration issued instructions that "all companies the property which is registered in the cadaster of immovable property under the regime right of " use, by entering into force of Law on Ownership Rights, shall acquire the ownership of the property, unless a third party proves that it has already acquired the right of ownership of the said property. "

¹¹ Property Sales and purchase agreement, concluded on 29 September 2008

¹² Request "Carine" submitted to Herceg Novi Real Estate Administration, on 1 February 2009

Počev od 21.03.2009. godine (kada je stupio na snagu novi Zakon o svojinsko-pravnim odnosima), po sili člana 419 tog zakona, sa nadnaslovom Pravo pretvaranja iz društvene svojine " svi dotadašnji imaoči prava upravljanja, korišćenja, odnosno trajnog korišćenja i raspolaganja na zemljištu u društvenoj svojini, sada državnoj svojini, - postali vlasnici tog zemljišta, u skladu sa čim je odredbom člana 420 istog zakona, sa nadnaslovom Upis prava svojine, da je utvrđena obaveza organu uprave za vođenje katastra nepokretnosti da na zahtjev dosadašnjih imaoća navedenih prava „dozvoliti brisanje društvene, sada državne svojine prava upravljanja, korišćenja, odnosno trajnog korišćenja i raspolaganja zemljištem i upisati pravo svojine u korist imaoća tih prava“.

Company „Carine“ submitted a new request for registering real estate in 2010

Acting on the request, Herceg Novi Real Estate Administration changed ownership regime in March 2010 and registered the company “Carine” as a holder of the right of use of nearly 100,000 square meters of real estate, which used to be public property of the company “Juzni Jadran”.¹³ Such a decision was based on the Law on Ownership Rights.

However, at the end of March 2010, the Supreme State Prosecutor's Office got involved in the case by filing a complaint to the Ministry of Finance since the decision did not specify into which name the real estate had been previously registered and on which basis. Also, the prosecutor noted that he was not allowed to comment on this matter, given that it was a state property which he represented.¹⁴ In September 2010, the Ministry of Finance upheld the complaint filed by the Supreme State Prosecutor's Office¹⁵ and Protector of property-based interests¹⁶ get involved in the case in November 2010, who, after Herceg Novi Real Estate Administration in December of the same year issued a new decision confirming the registration of the company „Carine“¹⁷ as a holder of the right of ownership, lodged a complaint to the Ministry of Finance.¹⁸ In February 2011, the Ministry of Finance rejected the complaint, this time estimating that the provisions of the Law on Ownership Rights¹⁹ were properly applied, so the Protector of property-based interests in April 2011 initiated a dispute before the Administrative Court,²⁰ which upheld the complaint in July of the same year.²¹ The Administrative Court's ruling overturned the decision of the Ministry of Finance, estimating that in this particular case that the procedure was violated and the competent state body's opinion that the compensation at the market price for the property in question was paid was not obtained.

VIII: PART OF REAL ESTATE SOLD

FOR 12 MILLION: In mid-2013, the owner of the company "Carine" sold part of the property, i.e. complex "Lazaret" in Meljine, which includes a hotel with 230 beds, conference hall and a marina of about 15,600 square meters. The 12-million euros worth agreement was concluded in May



Lokacija Lazaret u Herceg Novom

¹⁴ Complaint submitted by the Supreme State Prosecutor's Office, on 31 March 2010

¹⁵ Complaint accepted by the Ministry of Finance, 24 September 2010

¹⁶ Letter of Protector of property-based interests to Herceg Novi Real Estate Administration, on 25 November 2010

¹⁷ Decision on change of the right of use of “Carine” into the right of ownership, on 8 December 2010

¹⁸ Complaint filed by the Protector of property-based interests to the Ministry of Finance, on 23 December 2010

¹⁹ Decision of the Ministry of Finance by which decision of Protector of property-based interests is rejected, on 10 February 2011

²⁰ Letter submitted by the Ministry of Finance related to administrative dispute of Protector of property-based interests of Montenegro, on 18 April 2011

²¹ Judgment of the Administrative Court of Montenegro No.719/11, on 1 July 2011

2013²² between Podgorica-based company "Carine" and Tivat-based company "Imperio Holdings Limited", represented by a Russian citizen named Gennady Borisov. It is unusual that the customer agreed that "Carine" keep the down payment in the amount of €1 million if the agreement was terminated for failing to pay the agreed price.

Otherwise, by contractual provisions Popovic guaranteed to a buyer that the property he was selling "does not represent the property acquired in the privatization or bankruptcy for which no compensation at a market price has been paid," although paying the market price is a matter of a long-standing dispute with the state bodies. Particularly interesting is the provision by which the seller promised that by the end of 2013 he would delete the post-registration of the dispute over the property before the Supreme Court, previously launched by the company *Poljoprivredna korporacija Beograd AD*, claiming himself to be the legal predecessor of the assets of "Juzni Jadran" and asking from Herceg Novi-based company compensation in the amount of €20 million, based on the decision of the Supreme Court filed by the audit.²³ It is debatable how Popovic could know beforehand the ruling of the Supreme Court, which rejected the audit of *Poljoprivredna korporacija Beograd AD* as unfounded.²⁴

IX: ILLEGAL WORKS IN "LAZARET": Tivat-based company *Imperio holdings limited* founded by the same legal entity from the British Virgin Islands, represented by a Russian citizen, was registered as a holder of the right of use of land and right of ownership of buildings at the site Lazaret.²⁵

At the same time, the working group of the Privatization Council, which is in charge of implementing Article 419 of the Law on Ownership Rights in the report for the period from July to December 2014²⁶, concerning the request of Tivat-based company delivered a positive opinion and concluded that the compensation at the market was paid for the land in Lazaret. The Privatization and Capital Investment Council adopted this proposal at the session held on 21 October 2014.

The planning document, which includes the location in question envisages construction of a marina with 65 berths whereas the floor space index is 0.56. At the beginning of 2014 early construction works in the coastal zone at the site Lazaret in Meljine²⁷ were recorded and a complete demolition of a building on the southeast side of the complex, as well as an old mole, which began to crumble before environmental protection inspectors even came to the site, whereas there was no a construction site safety information board. At the close of 2014 officials of the Public Company for Coastal Zone Management *Morsko dobro* continued with overseeing the location and concluded that the works were being carried out on part of the coast that was not part of Lazaret complex, which has not been granted the permit for repairing the quay wall, either.²⁸ According to records of inspectors from *Morsko dobro*, commercialization of a mole, which has been envisaged as a seasonal dock, is what the investors intend to do.²⁹

In mid-June 2015, NGO MANS, based on the harmful privatization of once important company "Juzni Jadran" from Herceg Novi, as well as on the illegal construction at Lazaret, lodged two complaints with the Supreme State Prosecutor's Office.

²² Purchase and Sale Agreement, signed on 27 May 2013

²³ Post-registration of the dispute deleted on LN No 2592 KO Topola, whereas on LN 1520 registration of the dispute remained before the Administrative Court based on the complaint of the Protector of property-based interests

²⁴ Supreme Court ruling which rejected the audit as unfounded, on 26 June 2013

²⁵ Decision of the Real Estate Administration, branch office from Herceg Novi, on 1 July 2013

²⁶ Report on implementation of Privatization Plan from July to December 2014, on January 2015

²⁷ Record of the Service of Coastal Zone Management, on 25 March 2014

²⁸ Record of the Service of Coastal Zone Management, on 28 November 2014

²⁹ Record of the Service of Coastal Zone Management, on 7 April 2015

